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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

Case No. S90-00056

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CONSOLIDATED RAIL CORPORATION )  
a/k/a CONRAIL, )  
 )  
Defendant and )  
Third Party Plaintiff, )  
 )  
PENN CENTRAL CORPORATION, )  
et al., )  
 )  
Third Party Defendants. )  
 )  
-----/

The deposition of THOMAS BAYS

Date: Wednesday, December 2, 1992

Time: 1:30 p.m.

Place: 205 West Jefferson  
Suite 312  
South Bend, Indiana

Called as a witness by the  
Plaintiff in accordance with the  
Indiana Rules of Civil Procedure,  
pursuant to agreement entered into by  
counsel for the respective parties.

Before Dorothy L. Hoade, CSR  
Notary Public, State of Indiana

1  
2 MR. KURT N. LINDLAND  
3 U.S. Environmental  
4 and Natural Resources  
5 Division, Environmental  
6 Region 5:CS-3T  
7 77 West Jackson Boulevard  
8 Chicago, Illinois 60604

9 For the Plaintiff;

10 MR. JAMES A. ERMILIO  
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12 Suite 1200  
13 1550 M. Street, N.W.  
14 Washington, D.C. 20005

15 For Consolidated Rail Corporation;

16 MR. PIERCE E. CUNNINGHAM  
17 Frost & Jacobs  
18 2500 Central Trust Center  
19 201 East Fifth Street  
20 Cincinnati, Ohio 45202  
21 and

22 MR. GLENN ROSSWURM  
23 May, Oberfell & Lorber  
24 300 N. Michigan  
25 South Bend, Indiana

For Penn Central Corporation.

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I N D E X

## THE DEPOSITION OF

THOMAS BAYS

## DIRECT EXAMINATION

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## CROSS EXAMINATION

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## E X H I B I T S

None

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THOMAS BAYS

called as a witness by the Plaintiff being first  
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LINDLAND:

Q Would you please state your full name for the  
record.

A Thomas Bays.

Q And your address, please?

A (b) (6)

Q And your home phone number?

A (b) (6)

Q My name is Kurt Lindland. As I indicated, I'm an  
attorney representing the United States  
Environmental Protection Agency in the action for  
which we're here today.

Are you familiar with the oath that you just  
took?

A Yes.

Q Do you recognize that oath as binding on you today  
as it would be in a court of law?

A Yes.

Q If there is a question that I ask that you don't  
understand, say that you don't understand it, and  
I can rephrase the question. If there is an

1 objection, you should still answer the question  
2 unless you are instructed otherwise by your  
3 attorney. Do you understand?

4 A Yes.

5 Q Have you ever been deposed before?

6 A No.

7 Q Have you ever testified in a trial before?

8 A No.

9 Q Did you speak with anyone regarding this  
10 deposition prior to coming here today?

11 A No.

12 Q Did you review any documents in preparation for  
13 this deposition?

14 A No.

15 Q Did you prepare any notes, memorandum or letters?

16 A No.

17 Q I'd like to ask you a few questions about your  
18 background, starting with your education. If you  
19 could begin with high school, and in summary form  
20 list your educational background.

21 A I attended Elkhart High School and graduated from  
22 Elkhart High School. I did not attend college.

23 Q What year did you graduate from high school?

24 A 1969.

25 Q Have you taken any seminar courses or any informal

1 training?

2 A No.

3 Q When were you first employed after high school?

4 A October of 1969.

5 Q Who were you employed by?

6 A Penn Central.

7 Q Was that here in Elkhart?

8 A Yes.

9 Q What was your job responsibility or your job title  
10 in 1969 with Penn Central?

11 A I was an engine crew dispatcher; responsibility  
12 was to call an engineer and firemen for freight  
13 trains.

14 Q For freight trains?

15 A Right.

16 Q Why would you call them?

17 A Well, some of them will order -- they will call up  
18 and say we have -- back then -- an LS-21, freight  
19 train is going to be built for two o'clock, so you  
20 would go down the board, first man out that would  
21 qualify for the job. If he's rested or not, you  
22 would call the crews.

23 Q What is an LS-21?

24 A It's defunct now. It was a symbol for a freight  
25 train. Lake Shore station would go, now it would

1 be a coal train. Most of those old symbols don't  
2 exist anymore.

3 Q That was a symbol?

4 A That was a symbol back then. That would be  
5 basically a train symbol I would call someone for.

6 Q When you would say call them, what do you mean by  
7 call them?

8 A I would tell them the train was on duty at two  
9 o'clock, you stand for it.

10 Q They would then work on this train or be a member  
11 of the crew?

12 A Right.

13 Q Who was your supervisor in 1969 as an engine crew  
14 dispatcher?

15 A Let me think a second. It would have been the  
16 road foreman, and his name should have been Jim  
17 Swaboda.

18 Q Swaboda?

19 A S-b -- Swaboda -- not really sure how you spell  
20 it.

21 Q Do you know where Mr. Swaboda is today?

22 A I think he's retired.

23 Q How long were you an engine crew dispatcher?

24 A Roughly three years.

25 Q Were you promoted then?

1 A No. I just bid on another job.

2 Q What job was that?

3 A Would have been the Demurrage Industrial Car  
4 Control, DICCS for short, D-I-C-C-S.

5 Q I'm sorry. Could you say what that stands for  
6 again?

7 A Demurrage Industrial Car Control.

8 Q What were your responsibilities?

9 A I would key punch computer cards for when they  
10 switched local industries, the times they were  
11 done, so that they could bill them for demurraging  
12 cars that were setting there late or whatever.

13 Q What is a --

14 A A demurrage bill is like a debit, short for that.  
15 To make it short, you have 48 hours to unload a  
16 car. If it's spotted at nine a.m. today, your  
17 free days are Thursday and Friday. If the car is  
18 released later than that, then you start going  
19 down the line where it's going to be -- these  
20 figures are not going to be exact -- \$5 a day for  
21 three days, \$15 a day after that.

22 Q So it's sort of a penalty for late unloading?

23 A Yes. We have to pay the other railroad for  
24 holding their cars on line.

25 MR. CUNNINGHAM: Let's go off the

1 record a minute.

2 (Discussion off the record.)

3 BY MR. LINDLAND:

4 Q Who was your supervisor at that time?

5 A There was two. I can't remember one. Mike Schmatz  
6 was one, S-c-h-m-a-t-z, would have been there at  
7 the time.

8 Q Do you know where Mr. Schmatz is today?

9 A Edwardsburg, Michigan, retired.

10 Q How long were you in the DICCS position?

11 A Until -- well, I worked extra until the jobs were  
12 all moved to Lansing, Illinois, roughly 1984. I'm  
13 not sure that's an exact figure, but when they  
14 made the customer service center up in Lansing,  
15 Illinois.

16 Q So before then, the center was right here in  
17 Elkhart?

18 A Right, everything. You had a local freight office  
19 that handled all of your local stuff.

20 Q So in 1984, what were your responsibilities or  
21 what was your title then?

22 A Well, I was extra list, I would imagine, or I  
23 might have been on the relief job. We change  
24 around, but it's pretty much the same thing, just  
25 freight car reporting, would be a jack of all

1 trades to cover all we do.

2 Q What exactly is freight car reporting?

3 A Depends on which job. If it's going to be a  
4 specific thing for each job like that, if I worked  
5 the class clerk job, which is called utility now,  
6 you're responsible for making the documentation up  
7 for the switch list for when they hump the car to  
8 classification tracks.

9 Q So freight car reporting is a general sort of  
10 umbrella?

11 A General, depending on what specific area you were  
12 working at that time. It's all freight car  
13 reporting, car reporting, whatever.

14 Q Kind of subdivisions of jobs within that?

15 A Right.

16 Q What were some of those subdivision jobs beginning  
17 in 1984?

18 A Well, you were class clerk, check inbound trains,  
19 use the bill of lading to give, tell them what  
20 tracks to switch them to.

21 Q What would you check the inbound trains for?

22 A Initial number, then you would check the waybill  
23 for destination.

24 Q Were you responsible for changing the waybill at  
25 all as a class clerk?

1 A Not directly. You had -- you would receive  
2 information to change this car when it came in.  
3 You were just the -- you carried out. I wasn't  
4 responsible for talking to the customer to change  
5 anything. Freight sales might have called up and  
6 said, instead of sending this car to Selkirk, we  
7 want it.

8 Q Who normally asked to have a waybill changed?

9 A Freight sales, customer service.

10 Q And in 1984, they had moved to --

11 A 1984, they were still in Philadelphia. These were  
12 in '84 -- I'm not positive about this date --  
13 they, they took everything out of the yards and  
14 they tried to consolidate it into different  
15 spheres, where there should have been roughly  
16 twelve customer service centers. Every yard had a  
17 freight house at one time where we had a freight  
18 agent that was responsible for talking to local  
19 customers, arranging switch lists and getting  
20 business, but they, to be more efficient -- quote,  
21 unquote -- they moved it away from the local area  
22 so that it could be controlled under one roof.

23 Q So prior to 1984, roughly from 1970 through to  
24 '84, you were involved with that communication  
25 with the customers --

1 A Yes.

2 Q -- in Elkhart?

3 A Yes.

4 Q Then in '84, that responsibility moved to  
5 Philadelphia?

6 A Right. They did not like that.

7 Q What are some of the other subdivision sorts of  
8 jobs that you did as freight car reporting?

9 A Back then -- well, to make it real easy, we have  
10 four jobs out there at Elkhart now, but in '84 we  
11 had a classification clerk, there was a hump list  
12 clerk, and basically the hump list clerk would  
13 take the bills after you classified them,  
14 implement them into a, there was a teletype at the  
15 time for switch lists so that the crews, when they  
16 were switching the cars, could break them out.

17 Another job is a chief clerk, responsibility  
18 for, basically jack of all trades on the car  
19 reporting jobs. He would deal directly with  
20 customers, weigh cars. Freight sales or customer  
21 service would call, want something changed, and he  
22 would usually relate the information on.

23 Q So were you a chief clerk at one time?

24 A Yes, I worked that, too.

25 Q When exactly were you chief clerk?

1 A Anywhere from '84 till now. The job is still on  
2 due to the change, but it's basically the same  
3 things, sort of.

4 Q How have the duties changed?

5 A Oh, well, you really don't talk to any customers  
6 any more. The only time you can help them out now  
7 is by relating information that someone needs a  
8 switch, they've got a crew waiting, and you want  
9 to know what time the crew is getting there. You  
10 play a middleman, you check with the train master.  
11 He will tell you where the train is. The local is  
12 going to then relay it back.

13 You weigh cars with the electronic scale,  
14 and it's more of a key punch job now, too, where  
15 everything goes into the computer.

16 Q What computer is that?

17 A We have a large -- well, it's an IBM. We have  
18 desk tops. It's all hooked into a central  
19 location in King of Prussia, Pennsylvania.

20 Q Is that known as the Trims system?

21 A Trims system now.

22 Q Who is responsible for the Trims system? Do you  
23 know?

24 A King of Prussia, Philadelphia, the area in  
25 Philadelphia, the control desk.

1 Q Do you know of any individuals there that are  
2 responsible for maintaining the Trims system?

3 A No.

4 Q Who would know that?

5 A Just the telephone number is all we have. I would  
6 assume -- I'm assuming, I don't know. I could  
7 give you a phone number.

8 Q You mentioned class clerk, hump list clerk and the  
9 chief clerk. Is there another clerk?

10 A Bill rec.

11 Q What is a bill rec class?

12 A Makes up the outbound trains from the various  
13 class yards. They would pull cars out and we're  
14 responsible for making up what's called a bid. We  
15 go to the train dispatcher that tells us what  
16 groups and what's in the train and the time,  
17 engine numbers and everything.

18 Q So from 1984 to the present, you work and have  
19 worked in the freight car reporting, which  
20 includes class clerk, hump list clerk, chief clerk  
21 and bill rec clerk; is that correct?

22 A Yes.

23 Q Is there some way to identify the amount of time  
24 you have spent in each one of those clerk  
25 positions or is it too kind of random?

1 A It would be really too vague. I work, as of right  
2 now and probably the majority of my railroad  
3 career, as an extra list. I work all the jobs, so  
4 you could say above -- a figure right now, I  
5 probably work 25 percent on the four jobs that we  
6 have. I could work the bill rec two weeks in a  
7 row and maybe not work it again for a month.

8 Q How is it determined which one of those jobs you  
9 will work on?

10 A Seniority. You're called, what job is available  
11 for you. I would get a choice, if I was senior  
12 man. If there was two jobs open, I was first up,  
13 those two jobs were open, then I would have a  
14 choice, unless of course the other man below me  
15 wasn't qualified.

16 Q Who was your supervisor in 1984?

17 A We had quite a changeover. There was, I think,  
18 Susan Shulmeyer was there. She was there -- she  
19 has been there, but I'm not positive it was in  
20 1984. My dates are kind of off.

21 Q What is the name of the title of your supervisor?

22 A STR, Supervisor of Tabs Reporting back then. I  
23 think right now they're STOs, Supervisor of Trims  
24 Operation. The Tabs is just another name for  
25 Trims and that was just a different format,

1            basically car reporting.

2        Q    Do you know if Susan is still with Conrail?

3        A    Yes.

4        Q    Is she in the Elkhart area?

5        A    She is in Pittsburgh, to the best of my knowledge,  
6            in the National Customer Service Center; title, I  
7            do not know.

8        Q    Do you remember any of your other supervisors  
9            between 1984 and the present?

10       A    We have had Hal Dingledine, alias Hal Brandt. He  
11            changed his name. It might be easier to spell.

12       Q    Brandt?

13       A    B-r-a-n-d-t.

14       Q    Is he still at Elkhart?

15       A    No. The only supervisor we have at Elkhart is  
16            Betty Burr.

17       Q    She's your supervisor?

18       A    Right.

19       Q    Is Hal still with Conrail; do you know?

20       A    Yes. He's in the National Customer Service  
21            Center, Pittsburgh. It's where they all are about  
22            now.

23       Q    If we could go back to, I guess 1972, roughly,  
24            after you were the engine crew dispatcher?

25       A    Yes.

1 Q You were responsible basically for a customer  
2 service kind of responsibility?

3 A Yes.

4 Q Was one of your responsibilities reporting loss of  
5 material? If a customer called, for example, and  
6 said they lost some material, would you be  
7 involved with that?

8 A Only as a middleman. They would call me. I would  
9 either try to find our freight claims agent, the  
10 number who they would contact. I had no direct  
11 involvement in that, like that.

12 Q So they would call you and you would call a  
13 freight claims --

14 A They would call me and, an example, a car of  
15 lumber damaged. They would call me and want to  
16 find out who to contact, and I would relay them  
17 the information who to get ahold of or I would try  
18 to contact the individual to get ahold of them.

19 Q Who would they normally contact? Who would you  
20 normally tell them?

21 A We used to have -- I'm not sure it's still the  
22 same person, but we would have a claim agent, and  
23 we still do have claim agents. I don't know if  
24 they handle the same thing as they used to.

25 Q But back in 1972, what was their function?

1 A Physical jack of commodities or something. Before  
2 they would notify the customer not to do anything  
3 or else relay the information to me that I got  
4 ahold of someone and they would be there, not to  
5 do anything until they made a physical check of  
6 what it was so that they could ascertain damage,  
7 who was responsible for what.

8 Q So the claim agent was in Elkhart then?

9 A Yes. We still do have claim agents in Elkhart. I  
10 don't know if they still have the same  
11 responsibilities they used to.

12 Q Do you know anybody --

13 A We have a fellow by the name of D. W. Stokely.  
14 His primary duties are with the auto ramp, where  
15 they unload automobiles to give the whole area to  
16 be converted to van conversions. I know he goes  
17 to R. R. Donnelly and places in Warsaw to check  
18 out damaged material.

19 Other than that, I have no firsthand  
20 knowledge. I do not know what his job does on  
21 that.

22 Q So does he run the claims department?

23 A Yes, I think so. I don't know for a fact. I know  
24 he's an agent of it.

25 Q You said his primary responsibility is the auto

1 ramps?

2 A Right.

3 Q Do you know whether he's responsible for other  
4 material?

5 A I can't say positively, but I know he does do  
6 freight claim inspections.

7 Q Do you know anyone else in the claims department  
8 in Elkhart?

9 A No.

10 Q Were there any records kept between 1972 and 1984  
11 when you worked in the DICCS department? Were  
12 there any records kept of complaints from  
13 customers regarding lost material?

14 A Not to my knowledge, that I would have any  
15 information about.

16 Q Do you know who would have information about that?

17 A Not firsthand, unless -- this is supposition on my  
18 part. I would say Hal Brandt because he would be  
19 responsible for the records when they moved  
20 everything, if they would have had certain records  
21 that they kept.

22 Q Do you remember any of the claim agents' names  
23 between 1979 and 1984?

24 A Bob Schau. I think it's S-c-h-a-w or -a-u. I  
25 think it's U.

1 Q Do you know where Bob Schau is today?

2 A No, I don't.

3 Q Do you remember what his position was?

4 A Not specifically.

5 Q But he worked --

6 A He was claim agent. He was, I think, the guy that  
7 they dealt directly with for reimbursement.

8 Q Was the information regarding lost material, was  
9 that recorded in the Trims system during 1979 and  
10 1984, if you know?

11 A There was no Trims system back then.

12 Q Their computer system, the Tab system, I guess?

13 A I do not know.

14 Q So your only involvement with lost material was  
15 contacting a claims agent?

16 A Right, middle person.

17 Q When a customer would call and say that they had  
18 lost some material or that they had damaged  
19 material, would they tell you what kind of  
20 material it was?

21 A Not specifically, lumber or -- it wouldn't be,  
22 they wouldn't get, have a 3 x 4 piece of plywood.

23 Q But they would tell you the type of commodity?

24 A Yes, they would say. We dealt mostly with lumber.  
25 Lumber was our biggest thing with our local

1 industries.

2 Q Do you ever remember a customer calling and saying  
3 that they lost a liquid --

4 A No.

5 Q -- from a tank car?

6 A No.

7 Q Do you remember anyone calling -- that is, a  
8 customer -- and claiming to have lost hazardous  
9 materials of any kind?

10 A No.

11 Q How many people work under you in the freight car  
12 reporting?

13 A Clerical department.

14 Q Approximately how many people do you supervise?

15 A I'm not a supervisor.

16 Q How many people are in that department; do you  
17 know?

18 A Roughly twenty now. That's a bad figure, say  
19 about twenty-seven.

20 Q Do you know how many of those people have been  
21 with Conrail for more than ten years?

22 A Every one. If you don't have twenty years, you  
23 don't work there.

24 Q Is your office located in the clerk department?

25 A Yes.

1 Q Is that the main hump tower?

2 A The hump tower.

3 Q Are you familiar with a CT-168?

4 A Yes.

5 Q What form is that?

6 A That's the hazardous material form, that  
7 documentation we have to make out for a car, tank,  
8 whatever, carrying hazardous commodities.

9 Q Whose job is it to fill that out?

10 A It's the bill rec is responsible for it. The  
11 computer fills it out for us now, but we're still  
12 responsible for doublechecking its accuracy and  
13 filling out the rest of the information, crews.

14 Q When did the computer start filling it out?

15 A We started using the computer form within the last  
16 six months. It's been filling it out for,  
17 estimate of two years.

18 Q I think I'm confused. Who actually filled out the  
19 form?

20 A The bill rec, the bill rec clerk.

21 Q Prior to six months ago?

22 A Right. The bill rec still is responsible for  
23 overseeing it and filling it out, the final work  
24 on it before it's given to someone.

25 Q So you've filled out a 168 before?

1 A Yes.

2 MR. ERMILIO: Mr. Bays, for the  
3 stenographer and all of us here, would  
4 you please wait for Kurt to finish his  
5 question before you answer it.

6 BY MR. LINDLAND:

7 Q If you could, briefly describe how a CT-168 is  
8 used and what it's used for.

9 A It's used for the documentation of a dangerous  
10 tank, other dangerous commodities also, but a  
11 dangerous tank we have to put down the UN number,  
12 the placard information, where the car stands in  
13 the train, the time the train is called, engine  
14 number of the train, and who we deliver the CT-168  
15 to. The conductor is who we give it to now.

16 Q If there is a spill or leak of that material, of  
17 hazardous material from a car, would that be  
18 recorded on a CT-168?

19 A No.

20 Q Is there any other form that information would be  
21 recorded on?

22 A Not that I would have access to.

23 Q Do you have a form in mind that that would be  
24 recorded on that you don't have access to?

25 A No, I don't. The only form I have in mind is we

1 have a Haz-Mat number, an 800 number to call, but  
2 that is standard and you get that -- I don't have  
3 any information on if a car was leaking, what we  
4 would do about that.

5 Q Are you familiar with trichlorethylene?

6 A No.

7 Q Have you ever heard of carbon tetrachloride?

8 A I've heard of it, but I'm not familiar with it.

9 Q In what manner have you heard of it?

10 A People. You hear a chemical name like that. I  
11 hear a chemical name, but as far as what it is or  
12 what it's used for, I don't know.

13 Q Have you heard that name, that is, carbon  
14 tetrachloride, used out at Conrail before?

15 A No.

16 Q Where have you heard that name?

17 A Well, I mean -- I'm sure in Haz-Mat classes we  
18 used to have to attend.

19 Q So you attended Haz-Mat classes?

20 A It was mandatory up until approximately two years  
21 ago that all clerical departments, movement people  
22 attended a four-hour class every year on hazardous  
23 commodities.

24 Q So approximately how many classes did you attend;  
25 do you remember?

1 A Four or five, for want of better information. I  
2 never kept records.

3 Q Do you remember ever hearing a spill being  
4 discussed in one of those classes of hazardous  
5 materials?

6 A Nothing specifically.

7 Q Just in a generic sense?

8 A What would happen or what has to be done.

9 Q There was never an example of a spill used in one  
10 of those classes that you can remember,  
11 specifically?

12 A No. I must correct that. They showed films or  
13 slides of train wrecks where hazardous chemicals  
14 were involved, but specifically, I would be just  
15 guessing as to where they were. They said maybe  
16 -- I don't know if this is a fact -- this train  
17 wreck in Texas or whatever, but they were just  
18 examples. Nothing was specifically brought out.  
19 This happened here, there, this, this or this.

20 Q Are you aware of any spills of hazardous materials  
21 out at the Elkhart yard between 1969 and the  
22 present?

23 A No spills that I'm aware of.

24 Q How about releases?

25 A Yes. My dates I'm sure are not going to be exact

1 or close. We have had cars venting, that they  
2 evacuated the general area six, seven years ago,  
3 maybe, I'm saying around 1985, where I know they  
4 evacuated the homes in the area, and I wasn't  
5 working at Elkhart that day and heard it on the  
6 news. Luckily, I wasn't there.

7 Q Do you remember what material that was?

8 A No, I don't.

9 Q Do you remember -- I'm sorry, go ahead.

10 A The only thing that I remember was the general  
11 knowledge that the news said it was a tank car was  
12 venting gases.

13 Q And you were not at the yard that day?

14 A No.

15 Q Do you remember any other spills or releases?

16 A I remember one time. It's been probably, okay,  
17 I'm going to say mid-seventies. I was working a  
18 car checker job where, before the advent of the TV  
19 cameras and computer system, you would write down  
20 the numbers of the cars they pull on the track.

21 They parked a dangerous tank there that was  
22 supposedly venting and had the car department come  
23 out and check it. That was on one of the leads at  
24 the W yard.

25 Q The car department, would that --

1 A That would be the people that changed brake shoes,  
2 close doors, all the general work around the car,  
3 tanks, boxes, flat cars.

4 Q Would that fall within the car shop?

5 A Yes, car shop.

6 Q Do you remember what that material was?

7 A No, I do not.

8 Q Do you remember whether the state or the federal  
9 authorities were called?

10 A I do not know.

11 Q Do you remember any other spills or releases of  
12 hazardous materials?

13 A Not firsthand.

14 Q Have you heard of any?

15 A Yes. A few years ago, there was a tank car. I do  
16 not know the specific commodity. It was leaking,  
17 venting or whatever. That was in the LaPorte  
18 area.

19 Q LaPorte, Indiana?

20 A LaPorte, Indiana. We received the car from the  
21 South Shore Railroad. I remember we pulled  
22 documentation out on the car. They wanted to know  
23 what was in it, the hazardous material, and  
24 relayed the information to the train master.  
25 Other than that, I have no idea what.

1 Q Who did you hear that from, do you remember?

2 A Well, I heard it from numerous sources because a  
3 lot of people were calling, wanting information on  
4 this car, when we received it, what it had. It  
5 was, you did the same information over and over.  
6 Different people would want a copy of the Haz-Mat  
7 printout.

8 Q Who would be responsible for responding to those  
9 calls at Elkhart?

10 A The direct responsibility, I do not know, but the  
11 train master would be responsible for delegating  
12 someone to go out. If they would call a Haz-Mat  
13 team or if they had a special group of people who  
14 would have to go survey the scene first, I don't  
15 really have any knowledge of that directly, who  
16 would be responsible, other than the train master  
17 would be the one that would delegate it.

18 I say train master because there is one on  
19 duty every shift. He would relay the information  
20 to his superior, the superintendent, go from  
21 there.

22 Q Who was the train master then, do you know?

23 A No, I don't.

24 Q Do you know who the train master is today?

25 A We have four or five, and I know who they are,

1           yes.

2       Q   Was this during the day or at night, do you  
3           remember?

4       A   No, I don't. In the day and early afternoon, I  
5           know people were asking for information on the  
6           car. If the car, if something happened in the  
7           night, I do not know.

8       Q   Do you remember the customer?

9       A   No.

10      Q   Do you remember the supplier?

11      A   No. All I remember about the car is we got it from  
12           the South Shore and we were trying to find out if  
13           they delivered it to us leaking or something  
14           happened there.

15      Q   When you say South Shore --

16      A   CSS Railroad, South Shore Railroad.

17      Q   Would there have been any records that were kept  
18           identifying information relating to that spill?

19      A   Yes.

20      Q   What records are those?

21      A   That would be something I would not have access  
22           to. The superintendent would be, or the general  
23           manager would have information of that. I'm sure  
24           -- I know they keep records on that, but I do not  
25           know who would be responsible or where they would

1 be filed.

2 Q Do you know who the superintendent was during that  
3 time?

4 A No, I don't. It could have been Fred Barkley. He  
5 was followed by, could have been Mr. Comstock. I  
6 don't remember his first name, and I'm not sure if  
7 either one of those were.

8 Q What about the general manager?

9 A General manager back then, I do not know.

10 Q Do you know who the general manager is today?

11 A Sure, Gary Spiegel. They're much more  
12 approachable today than they were.

13 Q By a few years ago, do you mean less than five?

14 A Yes, five or less.

15 If I could just add something -- I know I'm  
16 not supposed to. I do not know the exact dates of  
17 these. I'm just calling this up from my memory.  
18 It possibly could have been seven years ago.

19 Q I understand. That's fine.

20 Do you remember who else was notified about  
21 that spill?

22 A The only people I know that were notified about  
23 the spill were my immediate supervisor at the  
24 time, which I think would have been the STR at the  
25 time. For want of a name, the superintendent, the

1 train master, and I think they probably had a road  
2 foreman go out and check the situation over.

3 There is a man that, whenever they have any  
4 problems in supervision, he is the supervision  
5 trouble shooter. He goes and looks over and  
6 relays firsthand information.

7 Q Who was your supervisor at that time; do you  
8 remember?

9 A I'm assuming it was Hal Brandt -- Dingledine then.

10 Q Do you remember any of the road foremen's names?

11 A No.

12 Q Do you know any road foremen's names that are  
13 there today?

14 A There is George Edsel and I don't know his first  
15 name, but his last name is Target. I assume  
16 that's his name.

17 Q What department are they in?

18 A Transportation.

19 Q Mr. Geary is their supervisor?

20 A Yes.

21 Q Do you remember any other spills or releases other  
22 than the three you have identified?

23 A No.

24 Q Are you familiar with Miles Laboratories?

25 A Yes.

1 Q How are you familiar with them?

2 A In the days when I was a DICCS clerk, I had direct  
3 customer employee contact.

4 Q Do you know what Miles Laboratories uses that  
5 would be transported through the Elkhart yard?

6 A They use dextrose. There's chemicals that they  
7 have in tanks that I know there is -- I shouldn't  
8 say I know -- they shipped tank cars out, but I do  
9 not right now know what they ship. I can't seem  
10 to think what it is. It's been so long since we  
11 did any billing for them.

12 Q When was this that you had this direct contact  
13 with them?

14 A Till '84.

15 Q Between seventy --

16 A Between '72 to '84, until the customer service  
17 centers were implemented.

18 Q Can you remember any other materials?

19 A There is a gypsum product they ship out, too,  
20 filler for bread or whatever.

21 Q What kind of contact would you have with Miles?

22 A Back then, we would have talked directly to their  
23 receiving department and telling them what cars we  
24 have in and a description of the articles that the  
25 car had, and we were also responsible for billing

1 out their loads locally.

2 Q Billing out their loads?

3 A Making out the shipping orders.

4 Q So Miles would both ship material from their  
5 laboratory out to customers, as well as receive  
6 material?

7 A Yes.

8 Q Were there any records kept of the contact you had  
9 with them?

10 A Yes.

11 Q In what form were those records kept?

12 A There was a physical -- excuse me, not a  
13 physical. We had a hard copy of the cars they  
14 had, computer printout, what was in it, who I  
15 talked to and what time I talked to them.

16 Q That was kept on the Trims system?

17 A That was kept on a piece of paper filed on board.

18 Q Do you know how long those records were kept?

19 A I do not know. They were supposedly, the legal  
20 term was five years; maybe more, maybe less. This  
21 I'm not positive of.

22 Q Do you know whether copies were sent to  
23 Philadelphia?

24 A No, I don't know.

25 Q Do you remember discussing with Miles the loss of

1 any of their material?

2 A No, I don't remember.

3 Q Do you remember any specific complaints from Miles  
4 regarding shipping their material through the  
5 Elkhart yard?

6 A Other than -- no, other than what times when  
7 something would sit longer than they wanted it to,  
8 just a general complaint, nothing specific.

9 Q Do you have any knowledge with respect to the  
10 quantity of materials shipped to Miles or from  
11 Miles through Elkhart?

12 A No knowledge.

13 Q Are you familiar with a company called Carpenter?

14 A Yes.

15 Q How are you familiar with Carpenter?

16 A The same way as I am with Miles, through customer  
17 contacts.

18 Q Do you know what material was shipped through the  
19 Elkhart yard to or from Carpenter?

20 A Yes, I do. I can't pronounce the official name.  
21 It's diazo --

22 Q Diazolone?

23 A No. It's about a block long. I really -- I could  
24 identify it if I saw it. I can't tell you what it  
25 was, but I know it's a hazardous commodity.

1 Q Do you know what it's used for?

2 A No. I can guess, styrofoam.

3 Q Is it a liquid?

4 A Yes.

5 Q It comes in a tank car?

6 A Yes.

7 Q Do you know how long this material has been  
8 shipped to Carpenter?

9 A Not exactly, but since the company has been in  
10 existence they have been receiving tank cars in  
11 Elkhart like that. It would be a guess on my part.

12 Q If we could just go back a moment to Miles. You  
13 said there are tanks of something. Was that  
14 liquid?

15 A Yes.

16 Q Going now back to Carpenter, are there any other  
17 materials you can think of that are either shipped  
18 to or from Carpenter through the Elkhart yard?

19 A There are other materials, but I really can't  
20 think of what they are. The reason I'm familiar  
21 with the tank is the CT-168 that we filled out on  
22 that, and even on a local job we'd have to fill  
23 out a 168.

24 Q Is that the only material shipped to or from  
25 Carpenter that requires a 168?

1 A I do not know.

2 Q Again, that was between 1972 through 1984?

3 A Up to the present, also.

4 Q But between 1972 and 1984, do you remember any  
5 other material that required a CT-168 going to or  
6 from Carpenter?

7 A No, I don't remember.

8 Q Are there any other facilities or companies like  
9 Miles or Carpenter that you can remember  
10 specifically that required a CT-168?

11 A No. I'd just be guessing. I assume there is  
12 another company, but I can't think of it offhand.

13 Q With respect to Carpenter, do you remember  
14 discussing with them either leaking or spilling of  
15 any of their material?

16 A No.

17 Q Are you aware of any records regarding any  
18 complaints from either workers or neighbors  
19 regarding spills of material from the Elkhart  
20 yard?

21 A No.

22 Q You mentioned a position known as class clerk?

23 A Yes.

24 Q How is a class clerk responsible for handling  
25 hazardous materials, if they are?

1 A You have to note the commodity as a hazardous  
2 material on the switch list, you're responsible  
3 for having documentation as to what the commodity  
4 is. The three main things you look for are a  
5 hazardous commodity code -- it has to have a  
6 commodity code -- a UN number, RQ number, and  
7 placards.

8 If you don't have that, the car cannot be  
9 moved. It has to be -- not pick it up and move it  
10 without proper shipping instructions.

11 Q Does a class clerk have any responsibilities that  
12 are related to recording or identifying spilled  
13 material?

14 A No.

15 Q Are you aware of any document that is used by  
16 either one of the four clerks that would identify  
17 the chemical content of materials shipped through  
18 the yard?

19 A Yes. We have a red book which identifies all  
20 hazardous UN numbers and commodities, reportable  
21 quantities, which is an RQ, reportable quantity of  
22 two gallons of this or an ounce of that.

23 Q Is the red book kept at the Elkhart yard?

24 A Yes.

25 Q So if I wanted to find out what the chemical

1 composition of a certain substance was and whether  
2 or not it went through the Elkhart yard, how could  
3 I find that information out?

4 A You could either give us the car number or the  
5 commodity code stick number and with the -- as  
6 long as you have the commodity stick code number,  
7 we would not need a car number. We could pull out  
8 the complete Haz-Mat information.

9 Q Okay. But a stick number --

10 A Commodity code number.

11 Q That is a generic sort of code?

12 A Yes.

13 Q So for example, if I wanted to find out whether  
14 any paint was ever shipped through the yard, there  
15 would be a stick number for paint?

16 A Yes.

17 Q What would you do then with that stick number?

18 A What I did with the stick number is, first, I  
19 would pull out the hazardous commodity form. It  
20 gives you a description of what it is, what to  
21 do.

22 Then you could go down, if you have the  
23 waybill, the shipping order, with their  
24 description of articles, and go to the red book  
25 then and look up quantities reportable, five

1 gallons of this or a hundred bottles of that. You  
2 could do it through the shipping orders, would be  
3 the only real way to identify the exact contents  
4 of the car.

5 Q So first I would need a shipping order number?

6 A Yes.

7 Q If I had a stick number, is there any way I could  
8 find out whether or not that sort of commodity or  
9 that kind of commodity was ever shipped through  
10 the yard? For example, is there a data base that  
11 is kept of stick numbers?

12 A No, not for a certain car. I should clarify that  
13 -- not that I know of for a certain car.

14 Q Do you know who would know that information?

15 A I would assume either GATX, the owners of the tank  
16 cars and the companies shipping it, if they can  
17 cross load one commodity after another without it  
18 being fumigated, cleaned or whatever.

19 Q So GATX, they're the ones that clean the tank  
20 cars?

21 A They have a cleaning service or they do their own  
22 in Chicago or farmed out to someone else.

23 Q So the GATX office that is closest to Elkhart is  
24 in Chicago?

25 A There is a facility in East Chicago, I think, but

1 not having any firsthand dealing with customers  
2 anymore, I don't know. They could be in Colorado  
3 now, for all I know.

4 Q Between 1972 and 1984, was GATX located anywhere  
5 else other than Chicago in the Elkhart area, that  
6 is, in this region?

7 A To the best of my knowledge, there may have been  
8 other places, but we did have a GATX office in the  
9 Chicago area to contact.

10 Q That is the one that you would notify regarding  
11 their tank cars?

12 A I wouldn't notify them on anything, but if someone  
13 had to contact them, I would assume that's where  
14 they would go.

15 Q You mentioned a hump list clerk earlier. Does  
16 that individual have responsibilities regarding  
17 the handling of hazardous materials?

18 A Yes, they did. There is no hump list anymore. If  
19 you marked on the bill "dangerous car," he had to  
20 identify it on the hump list. So when the crew  
21 was switching the car, they knew what they were  
22 switching.

23 Q Do you know whether hump lists are kept now?

24 A We keep them now. I do not know for how long  
25 they're kept anymore.

1 Q Do you know how long they were kept between 1972  
2 and 1984?

3 A No.

4 Q Did the hump list clerk have any responsibilities  
5 related to the spill or release of hazardous  
6 materials?

7 A No.

8 Q What about the chief clerk? Do they have  
9 responsibilities related to handling hazardous  
10 materials?

11 A Nothing specific.

12 Q What about the spill or release of hazardous  
13 materials?

14 A Nothing specific.

15 Q Are all spills or releases recorded, to the best  
16 of your knowledge?

17 A The best of my knowledge, I do not know either  
18 way, if they are or if they aren't.

19 Q Is that because you're not responsible for  
20 recording spills or releases?

21 A Yes.

22 Q Are you in a union?

23 A Yes.

24 Q What union is that?

25 A The TCU, Transportation Communication Clerical

1 Workers.

2 Q Who is the chairman of that union, do you know?

3 A Kilroy -- no -- Randolph, Howard Randolph. I had  
4 to think.

5 Q You mentioned a red book. Is that updated  
6 periodically, that you know of?

7 A Yes.

8 Q Do you know approximately how often?

9 A No.

10 Q Do you remember when the last time was it was  
11 updated?

12 A No, I don't, specifically. I could tell you I  
13 think it's updated yearly, but I do not know for a  
14 fact.

15 Q How long has that book been around, do you know?

16 A It's been around a minimum of five years, maybe  
17 longer.

18 MR. LINDLAND: I have no further  
19 questions right now.

20 MR. CUNNINGHAM: I have a few.

21 CROSS EXAMINATION

22 BY MR. CUNNINGHAM:

23 Q Mr. Bays, it's my understanding from your  
24 testimony that you first began working in 1969; is  
25 that right?

1 A Yes.

2 Q The first employer that you had in the railroad  
3 industry was Penn Central Corporation; is that  
4 right?

5 A Yes.

6 Q And it's further my understanding that your first  
7 job for Penn Central was at the Elkhart yard?

8 A Yes.

9 Q Do you have any knowledge of any of the events at  
10 the Elkhart yard before 1969, when you first began  
11 to work there?

12 A No.

13 Q Do you know a Claude Bruton?

14 A No.

15 Q Have you heard his name?

16 A Yes.

17 Q In what connection?

18 A He has an ex-brother-in-law working up there.

19 Q Do you know his name?

20 A Jim Gunn, G-u-n-n.

21 Q What kind of job does he have?

22 A He's a clerk, also.

23 Q Does he work with you?

24 A Yes.

25 Q Have you talked with him about this case?

1 A No.

2 Q Do you know a Ted Berkshire?

3 A No.

4 Q Are you familiar with any of the materials that  
5 were used by the transportation department or any  
6 department at Elkhart before you came on board in  
7 1969?

8 A No.

9 Q Are you familiar with any alleged spills of  
10 materials before 1969?

11 A No.

12 Q Are you generally familiar with the layout of the  
13 tracks at Elkhart?

14 A Yes.

15 Q Are you familiar with Track 69?

16 A Yes.

17 Q Can you generally tell me where that is located in  
18 connection with the overall layout?

19 A Track 69 -- there is 72 class tracks. 69 would be  
20 on the south end of the yard between the westbound  
21 departure tracks and the cleaning track.

22 Q Is there a designation, Mr. Bays, in the yard,  
23 that is in the way of a sign or some other  
24 delineation designating a particular track 69?

25 A Yes.

1 Q How is it so designated?

2 A There are nine groups of tracks and there are some  
3 switchers that switch the cars automatically to  
4 the other tracks. Each group is identified. You  
5 would count like 54. Each track is not numbered  
6 where you would walk down the middle and it would  
7 say 69, but 72 would be your last, so it's three  
8 tracks over.

9 Anyone that would walk in the yard or would  
10 be familiar with it would know where it is.

11 Q I would assume that that is necessary for certain  
12 switching purposes or identification or location  
13 of cars; is that right?

14 A Yes.

15 Q Do you have personal knowledge as to whether or  
16 not Track 69, for example, was in its present  
17 location before you came as an employee in October  
18 1969?

19 A No.

20 Q Do you know, since you became employed after  
21 October of 1969, whether there has been any change  
22 in the tracks or their layout? Do you know?

23 A There have been changes. The layout is still the  
24 same, but some of them, they're upgraded or  
25 lengthened.

1 Q Would the numbers of the tracks be changed from  
2 time to time?

3 A No.

4 Q So that has remained the same, as far as you know?

5 A Yes.

6 Q When you began in October 1969, do you recall who  
7 the freight claim agents were at that time?

8 A No.

9 Q You do, I believe you have testified that there  
10 were claims agents at that time; it's my  
11 understanding you simply don't know their names?

12 A Yes.

13 Q It's my understanding that the freight claim  
14 agent's responsibility would be similar to that of  
15 an insurance adjuster who would, for example, go  
16 out and estimate the damage to someone's  
17 automobile and see whether or not it was damaged  
18 and at what part and make a report; is that  
19 correct.

20 MR. ERMILIO: Can you rephrase  
21 that?

22 MR. CUNNINGHAM: I can shorten it  
23 and improve it, certainly.

24 BY MR. CUNNINGHAM:

25 Q Would the freight claim agent's responsibility be

1 the same or similar to an insurance adjuster's  
2 responsibility?

3 A I do not know.

4 Q What is your understanding of what a freight claim  
5 agent's responsibility is?

6 A That, what I understand is for damage claim,  
7 someone has a claim against the railroad,  
8 basically what you said, like an insurance  
9 adjuster, but I do not have any firsthand  
10 knowledge of how his job works. It may encompass  
11 a lot more.

12 Q Are those gentlemen kept fairly busy, to your  
13 knowledge?

14 MR. ERMILIO: What do you mean by  
15 busy?

16 BY MR. CUNNINGHAM:

17 Q Are they active? Do they have a lot of claims to  
18 investigate?

19 MR. ERMILIO: Can you be more  
20 specific? Busy or a lot of claims?

21 BY MR. CUNNINGHAM:

22 Q Do you understand what I mean?

23 A Yes.

24 Q Tell me, then, if you can.

25 A I do not know.

1 Q So you don't know what degree of activity they  
2 have?

3 A I don't know if he comes in at seven in the  
4 morning and doesn't stop till ten at night. I  
5 have no firsthand knowledge of that operation.

6 Q Do they investigate thefts, as well as cargo  
7 losses?

8 A I do not know.

9 Q So basically, all you know about them is that they  
10 exist and they perform certain functions, which  
11 you have already testified to; is that right?

12 A Yes.

13 Q Is there anything else you know about them?

14 A No.

15 Q In answer to Mr. Lindland's questions regarding  
16 certain releases, it's my understanding there were  
17 three such incidents that you can recall. Am I  
18 right about that?

19 A Yes.

20 Q None of those incidents involved a spill of any  
21 liquid into the ground; is that correct?

22 A I do not know.

23 Q You have no knowledge at anytime, from what I  
24 gather your testimony to be, of any liquid spill  
25 into the ground in Elkhart at any time since you

1 have been employed at Elkhart?

2 A That is right.

3 Q You are familiar with certain escapes, shall we  
4 say, or release of gases from certain cars that  
5 were in the yard, and you have testified to those;  
6 isn't that right?

7 A Yes.

8 Q These escapes of gases took place, as I understand  
9 it, at various times, one being in the  
10 mid-seventies; is that right?

11 A Yes.

12 Q Do you know whether or not Penn Central or Conrail  
13 owned the land at that time?

14 A No, I don't.

15 Q You described an incident involving the venting of  
16 certain tank cars, I believe, in LaPorte,  
17 Indiana. I didn't catch when that was, or do you  
18 know when that was?

19 A Not exactly. It was in the ball park figure of  
20 the mid-eighties or late eighties.

21 Q I don't recall the third incident. Can you go  
22 just briefly through that again? It might be my  
23 notes just are deficient.

24 A The third incident would have been when  
25 they evacuated the surrounding areas. I was

1 working in South Bend at the time, and my only  
2 knowledge of this event was what was on the news.

3 Q Your best recollection, now that I look at what  
4 you're talking about, was 1985; is that right,  
5 approximately?

6 A '85 or earlier.

7 Q Or as you stated, I think, about seven years ago?

8 A Right.

9 MR. CUNNINGHAM: I think that's  
10 all the questions at this time.

11 MR. ERMILIO: I have no  
12 questions.

13 MR. LINDLAND: I have two more  
14 questions.

15 REDIRECT EXAMINATION

16 BY MR. LINDLAND:

17 Q You mentioned that you were familiar with carbon  
18 tetrachloride or that you had heard about it?

19 A Yes. I mentioned I had heard about it. I have no  
20 firsthand knowledge of it.

21 Q Have you ever seen the name carbon tetrachloride  
22 on a CT-168?

23 A No, or to the best of my knowledge -- let me  
24 clarify that -- I have not seen one. I can't  
25 recall.

1 Q You mentioned that the tank car manufacturer is a  
2 GATX, or a tank car manufacturer. If you could  
3 sort of just clarify whether that is a main  
4 manufacturer of tank cars or one of several?

5 A It's one of several. It readily comes to  
6 knowledge because GATX is probably the first tank  
7 car I can remember seeing, and I would estimate  
8 that they probably are, the majority of tanks are  
9 GATX numbers, but my firsthand knowledge, I do not  
10 know, but my assumption is that they are the  
11 number one, majority of all the tanks are GATX.

12 Q Do you know the names of any other tank car  
13 manufacturers?

14 A I do not know their names, specifically. I can  
15 give you their call numbers, their numbers for the  
16 cars. I know there is a Union tank car company.  
17 That would be a UTLX number.

18 Q Do you know where the Union tank car, the nearest  
19 Union tank car facility is?

20 A No, I do not.

21 Q Do you know any other tank car manufacturers?

22 A There is a -- well, the initials. I do not know  
23 the name. There is a CRDX.

24 Q DX?

25 A DX.

1 Q Is DX symbolic with tank car?

2 A Should be, yes. One that comes to mind, of  
3 course, there are two big names, DOWX would be  
4 Dow.

5 Q These are all tank cars you have seen go through  
6 Elkhart?

7 A Oh, yes.

8 Q Do you know where the nearest Dow tank car  
9 facility is?

10 A No, I don't.

11 Q If there is a leak or a rupture in a tank car,  
12 would the tank car manufacturer be notified?

13 A I do not know, firsthand knowledge, I have no  
14 idea.

15 Q Do you know who would know?

16 A Yes, I do, the superintendent or the train master  
17 on duty.

18 MR. LINDLAND: That's it.

19 MR. CUNNINGHAM: One more  
20 question.

21 RE CROSS EXAMINATION

22 BY MR. CUNNINGHAM:

23 Q Who was the train master when you first came to  
24 work at Elkhart; do you remember?

25 A Yes. His name -- I do not remember his first name

1 but Stanley was his last name -- no, Stanley  
2 Burton, okay.

3 Q Good memory. Is Stanley Burton still around?

4 A I think he died a few years ago.

5 Q Long way back for him?

6 A He was up there back then, I think.

7 Q Do you know who preceded him?

8 A No.

9 Q Who was the train master? Who was the terminal  
10 superintendent when you came on board? Do you  
11 remember that?

12 A No, I don't. It could have either been John  
13 Hennis or Dowling -- big Notre Dame fan.

14 Q What was Dowling's first name?

15 A Tom Dowling.

16 Q Is Tom Dowling still around?

17 A He's alive. I don't know where he is.

18 Q You don't know where he lives?

19 A No, I don't.

20 MR. CUNNINGHAM: I think that's  
21 all.

22 MR. LINDLAND: I have no further  
23 questions; however, the United States  
24 reserves its right to re-examine this  
25 witness subject to the production of

any documents identified in this  
deposition.

(Deposition concluded at 2:45 p.m.)

+ + + oOo + + +

\_\_\_\_\_  
THOMAS BAYS

SUBSCRIBED AND SWORN to before me  
this \_\_\_\_\_ day of \_\_\_\_\_,  
1992.

\_\_\_\_\_  
Notary Public, State of Indiana  
County of Residence:  
My Commission Expires:

## CERTIFICATE

I, DOROTHY L. HOADE, being a Notary Public in and for the County of St. Joseph and State of Indiana, duly authorized to administer oaths, do hereby certify there appeared before me at the said time and place THOMAS BAYS, who was first duly sworn by me to testify the truth and nothing but the truth in response to questions propounded at the taking of the foregoing deposition.

I further certify that I then and there reported in machine shorthand the proceedings at said time and place; that the proceedings were then reduced to typewriting from my original shorthand notes; and that the foregoing typewritten transcript is a true and accurate record thereof.

I further certify that the deposition was read and signed by the deponent in the presence of a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this \_\_\_ day of \_\_\_\_\_ A.D., 1992.

DOROTHY L. HOADE  
Notary Public, State of Indiana  
Residence: St. Joseph County  
My commission expires 3-12-95